***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

+W.P.No.21067 of 2007

% 21-09-2007

P.Ravichandra Reddy, s/o. Radhakrishna Reddy, Contractor, 50 years, H.No.3/187, Dhurjatinagar, Gudur, Nellore District.

..... PETITIONER

Vs.

$ The Executive Engineer, Nellore District South Division, Gudur, Nellore District, Irrigation and CAD Department.

.....RESPONDENT

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Sri Koonreddy Anji Reddy

^ Counsel for respondents : Assistant Government Pleader for Irrigation.

?CASES REFERRED :

AIR 1975 SC 266

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.21067 of 2006

Dated: 21.09.2007

Between:

Sri P.Ravichandra Reddy. .. Petitioner.

And

The Executive Engineer,
Nellore District, South Division,
Gudur, Nellore District. .. Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRI PETITION No.21067 of 2006

ORDER:

This Court issued *Rule nisi* on 11.10.2006 and in WPMP.No.26725 of 2006, an interim direction had been granted directing the respondent not to deny the petitioner in participating in future contracts until further orders. WVMP No.914 of 2007 is filed to vacate the interim order.

2. Sri Koonreddy Anji Reddy, the learned counsel representing the petitioner, would maintain that the alleged show cause notice, on which the respondents is relying upon, is in relation to a different ground altogether, and even otherwise, the same is vague. Specifically, for putting the petitioner in the blacklist, no show cause notice, as such, had been issued and no explanation had been called for, and hence, the same is in violation of principles of natural justice. The counsel also placed strong reliance on **M/s. Erusian Equipment and Chemicals Ltd., v. State of West Bengal and another**[1].

3. Per contra, the learned Assistant Government Pleader for Irrigation had taken this Court through the contents of the counter affidavit and would maintain that the due procedure had been followed while making this order, and hence, the writ petition is liable to be dismissed.

4. Heard the counsel.

5. The writ petition is filed for a writ of Mandamus declaring the action of the respondent in issuing Lr.No.DB/JTO.3/M.19/810M, dated 29.09.2006, and determining the work under clause 60(A) of APDSS duly forfeiting the EMD & FSD to the Government and suspension of business for tendering works for a period of one year without issuing any notice or taking reply or explanation, as illegal and arbitrary, and consequently, direct the respondent not to blacklist or forfeit EMD & FSD without issuing proper notice and set aside the letter, dated 29.09.2006, and to pass such other suitable order.

6. In the affidavit filed in support of the writ petition, the petitioner had stated that he is a registered contractor, as per various Government Orders, executing all the contract works of the Government without any complaint. He has participated in the tenders of allotment of work of reconstruction of Nelamadugu outlet wall at Ch.7620 M on Chennur Tank supply Channel near Thippavarappadu village in Gudur Mandal, Nellore District and entered into an agreement with respondent authority through Agreement No.98/06-07. The approximate value of the work is Rs.8.00 Lakhs and the work is to be executed within a period of 3 months. The agreement was executed on 26-08-2006.

7. It is also stated that after entering into the agreement with the respondent herein, the petitioner spent money in getting ready of material and men and when he was getting ready, the respondent authority, within a month of concluding the agreement with it, issued notice to start the above said work within seven days, and after some time i.e., on 29-09-2006 within a week period as such direction

and within a month after entering into the agreement and having left over two months period for completion of the contractual work, without having any reasons and notice and without taking any reply, issued the letter No.DB/JTO.3/M.19/810 M, dated 29.09.2006, and determined the said work under clause 60(A) of APDSS duly forfeiting the EMD & FSD to the Government and suspension of business for tendering works for a period of one year in terms of G.O.Ms.No.521, dated 16.12.1984.

8. It is also stated that the respondent herein without issuing any notice or taking any reply for his notice of blacklisting contractor like the petitioner through letter, dated 29.09.2006, violating tender rules and regulations and principles of natural justice. The petitioner's work is determined under Clause 60(A) of APDSS duly forfeiting the EMD & FSD to the Government and suspension of business for tending works for a period of one year is illegal, arbitrary and violation of Article 14, 19 (1) g of the Constitution of India and principles of natural justice and also tender rules and regulations, and such action of the respondent in avoiding the petitioner to participate in further works causes much irreparable loss and it even amounts to violation of fundamental rights. The impugned order is issued without any reasons and determination of the work under clause 60(A) of APDSS is illegal and arbitrary when there is two months period out of three months period for execution of the said work, and the respondent insisting the petitioner and giving number of letters to start the work within a week for reasons best known to it is unwarranted and arbitrary, hence, the petitioner approached this Court.

9. In the counter affidavit, it is stated that it is true that the petitioner is a Registered Contractor and doing contract works of the

Government. The tenders for the work “FDR 11/2005 Reconstruction of Nelamadugu Village in Gudur Mandal, Nellore District was sanctioned at the estimated cost of Rs.8.00 lakhs under D.R.No.22/2006-07. The petitioner participated in the tenders and his tender was at (-) 15% less over Estimated Contract Value of Rs.791895/- worked out to Rs.673111/- was accepted on 7-6-06/9-6-06 and this fact was communicated to the Petitioner in Divisional Letter No.DB/JTO.3/385M dt.9-6-2006 calling upon the Petitioner to attend the Respondent’s office within 7 days from the date of receipt of the intimation for signing the agreement. The petitioner did not turn up. Final notice was issued vide Divisional Notice No.684M, dated 25-08-2006 and to attend the Respondent’s office within 3 days from the date of receipt of the said letter for concluding the agreement or else the tender will be cancelled by forfeiting the Earnest Money Deposit (EMD) and that the next lowest bid will be considered. The petitioner attended the division office and concluded the agreement on 26-08-2006 under Agreement No.98/2006-07 i.e., after lapse of two and half months after acceptance of his tender. Even after concluding the agreement, the Petitioner did not start the work. In view of the urgency in para 10 of G.O.Ms.No.157, dated 18.04.2006, Government accorded permission to call for short tenders with 7 days duly relaxing the normal tender period of 14 days minimum. In the Divisional Letter No.773 M, dated 14-09-2006 the Petitioner was specifically informed to take up the work within the stipulated time. The petitioner did not show any interest in commencing the work. It is also stated that the work is of urgent nature and supposed to be completed on war footing basis before onset of monsoon to safeguard the ayacut of about Acres 3000.00 under Chennur Tank. As the petitioner did not start the work, in spite of several notices and persistent persuasions by phone, the

Divisional Office has issued Letter No. 794M dated 21-09-2006 with a warning to cancel the agreement duly forfeiting the deposits if he did not commence the work on or before 28-09-2006. The concerned Deputy Executive Engineer, in charge of the work in his letter No.524E, dated 28-09-2006 reported that the work was not started as on that date.

10. It is also further stated that in the above circumstances, vide Divisional Office Letter No.810M, dated 29.09.2006, the contract of the Petitioner was determined under clause 60 (A) of A.P.D.S.S. duly forfeiting the deposits to the Government and suspending the business from tendering works for a period of one year in terms and conditions laid down in G.O.Ms.No.521, dated 10.12.1984.

11. It is further stated that the allegation made in para 4 by the petitioner stating that he spent money in getting raw material and men is false and hence denied. The petitioner never mobilized men and material at the site of work, as on the date of determination of work and therefore the allegation is denied as false. In spite of several notices and persistent persuasions by phone, the contractor did not commence the work and keeping in view of the urgency, the contract was determined under clause 60 (A) of APDSS after issuing notice.

12. It is also further stated that without issuing notice, the petitioner was kept in black list is not correct. There is no violation of tender rules and regulations and principles of natural justice. The determination of the contract was done duly following the procedure laid down. The petitioner was only suspended for tendering works for a period of one year only. The letter No.DB/JTO.3/M.19/810M, dated 29.09.2006 is for determining the Contract duly forfeiting deposits and

suspending the business of the Petitioner for tendering works for a period of one year after determining the work under Clause 60 (A) of Andhra Pradesh Departmental Standard Specifications (APDSS). After the above orders, the urgent work was entrusted to the Water Users Association Committee of Channel Tank on 30-09-2006 and the same was completed by them by 30-10-2006.

13. In the said circumstances, it was prayed for that interim order to be vacated and the writ petition to be dismissed.

14. In **M/s. Erusian Equipment and Chemicals Ltd., v. State of West Bengal and another** referred supra, the Apex Court at para 20 observed as hereunder:

> "Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

15. In the light of the records produced before this Court, this Court is satisfied that for the specific purpose of blacklisting, a show cause notice, as such, had not been issued, and it is also needless to say that vague allegations made in the other correspondence may not satisfy the requirement of issuance of show cause notice for the purpose of blacklisting of the petitioner. But, however, liberty is given to the respondent to issue fresh show cause notice in relation to blacklisting, if the respondent requires to do so.

16. The writ petition is hereby allowed to the extent indicated above.

No order as to costs.

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(P.S.NARAYANA,J)

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Dt.21.09.2007
v v

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[1] AIR 1975 SC 266